

INSURANCE CODE
TITLE 7. LIFE INSURANCE AND ANNUITIES
SUBTITLE A. LIFE INSURANCE IN GENERAL
CHAPTER 1115. SUITABILITY OF CERTAIN ANNUITY TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.001. PURPOSE. The purpose of this chapter is to establish standards and procedures regarding recommendations made to a consumer that result in a transaction involving annuity products, and to require insurers to establish a system to supervise those recommendations, to ensure that the insurance needs and financial objectives of the consumer as of the time of the transaction are appropriately addressed.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 6, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.002. DEFINITIONS. In this chapter:

(1) "Agent" means an individual who holds a license under Chapter [4054](#) and who sells, solicits, or negotiates insurance or annuity contracts in this state.

(2) "Annuity" means an annuity that is an insurance product under the laws of this state that is individually solicited, whether the product is classified as an individual annuity or group annuity.

(2-a) "Continuing education provider" means a person

authorized to offer continuing education courses under Chapter 4004.

(3) "Insurer" means a company authorized to engage in the business of life insurance and annuities in this state.

(4) "Recommendation" means advice provided by an agent, or an insurer if no agent is involved, to an individual consumer that results in a purchase, exchange, or replacement of an annuity made in accordance with that advice.

(5) "Replacement" means a transaction in which a new policy or contract is to be purchased and the proposing agent, or the proposing insurer if an agent is not involved, knows or should know that, by reason of the transaction, an existing policy or contract has been or is to be:

(A) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(B) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) reissued with any reduction in cash value; or

(E) used in a financed purchase.

(6) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(A) age;

(B) annual income;

(C) financial situation and needs, including the financial resources used for the funding of the annuity;

(D) financial experience;

(E) financial objectives;

(F) intended use of the annuity;

(G) financial time horizon;

(H) existing assets, including investment and life insurance holdings;

- (I) liquidity needs;
- (J) liquid net worth;
- (K) risk tolerance; and
- (L) tax status.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 7, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This chapter applies to any recommendation to purchase, replace, or exchange an annuity that:

(1) is made to a consumer by an agent, or an insurer if an agent is not involved; and

(2) results in the recommended purchase, replacement, or exchange.

(b) Unless otherwise specifically included, this chapter does not apply to transactions involving:

(1) direct response solicitations if there is no recommendation based on information collected from the consumer under this chapter; or

(2) contracts used to fund:

(A) an employee pension benefit plan or employee welfare benefit plan covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(B) a plan described by Section 401(a), 401(k), 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if established or maintained by an employer;

(C) a government or church plan, as defined by Section 414, Internal Revenue Code of 1986, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization described under Section

457, Internal Revenue Code of 1986;

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(E) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(F) prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 8, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. 1777, 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.004. NO CAUSE OF ACTION CREATED. This chapter may not be construed to create or imply a private cause of action for a violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

Sec. 1115.005. RULES. The commissioner may adopt reasonable rules in the manner prescribed by Subchapter A, Chapter 36, to accomplish and enforce the purpose of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. 1777, 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED.

(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer if an agent is not involved, must have a reasonable basis to believe that:

(1) the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information;

(2) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and the surrender charge, any potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(3) the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or a death or living benefit;

(4) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the annuity, and any riders or similar product enhancements are suitable, and, in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and

(5) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether the consumer:

(A) will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders or similar product enhancements;

(B) would benefit from product enhancements and

improvements; and

(C) has had another annuity exchange or replacement, and in particular, an exchange or replacement in the preceding 36 months.

(b) Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an agent, or an insurer if an agent is not involved, shall make reasonable efforts to obtain the consumer's suitability information.

(c) Except as permitted by Subsection (d), an insurer may not issue an annuity recommended to a consumer unless the insurer has a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(d) Subject to Subsection (e), an agent or insurer does not have any obligation to a consumer related to an annuity transaction if:

(1) the consumer refuses to provide suitability information requested by the agent or insurer;

(2) the agent or insurer does not make a recommendation;

(3) the agent or insurer makes a recommendation later found to have been prepared based on inaccurate material information provided by the consumer; or

(4) the consumer decides to enter into a transaction that is not based on a recommendation of the agent or insurer.

(e) An insurer's issuance of an annuity under circumstances described by Subsection (d) must be reasonable under all circumstances actually known to the insurer at the time the annuity is issued.

(f) An agent, or an insurer if an agent is not involved, shall at the time of sale of an annuity:

(1) make a record of any recommendation made by the agent or insurer that is subject to Subsection (a);

(2) obtain a customer-signed statement documenting the customer's refusal, if any, to provide suitability information; and

(3) obtain a customer-signed statement acknowledging

that an annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 9, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.052. SUPERVISION SYSTEM. (a) Each insurer shall establish supervision that is reasonably designed to achieve the insurer's and the insurer's agents' compliance with this chapter.

(b) An insurer may comply with Subsection (a) by establishing and maintaining the insurer's own supervision system under which, at a minimum, the insurer:

(1) maintains reasonable procedures to inform the insurer's agents of the requirements of this chapter and incorporates the requirements of this chapter into relevant agent training manuals;

(2) establishes standards for agent product training and maintains reasonable procedures to require the insurer's agents to comply with the requirements of Section [1115.056](#);

(3) provides product-specific training and training materials that explain all material features of the insurer's annuity products to the insurer's agents;

(4) maintains procedures to review each recommendation electronically, physically, or otherwise before the issuance of an annuity that:

(A) are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable; and

(B) may:

(i) include the application of a screening

system to identify selected transactions for additional review; and

(ii) be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(5) maintains reasonable procedures, such as confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring, to detect recommendations that are not suitable, which may involve applying sampling procedures or confirming suitability information after the issuance or delivery of the annuity; and

(6) annually provides a report to the insurer's senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended.

(c) This subsection does not prohibit an insurer from contracting for the performance of a function, including maintenance of procedures, required by Subsection (b). An insurer's supervision system under Subsection (b) must include the supervision of contractual performance under this subsection that includes, at a minimum:

(1) annually obtaining certification that complies with Section [1115.053](#) from a senior manager who represents that the contracted function is properly performed; and

(2) monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed.

(d) An insurer is not required by this section to include in the supervision system an agent's recommendations to consumers of products other than the annuities offered by the insurer.

(e) An agent may not dissuade, or attempt to dissuade, a consumer from:

(1) truthfully responding to an insurer's request for confirmation or suitability information;

(2) filing a complaint; or

(3) cooperating with the investigation of a complaint.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 10, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.053. CERTIFICATION REQUIREMENTS. A person may not provide a certification under Section [1115.052](#)(c)(1) unless the person:

(1) is a senior manager with responsibility for the delegated functions; and

(2) has a reasonable basis for making the certification.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 11, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS. (a) Subject to Subsection (c), sales made in compliance with the conduct rules of the Financial Industry Regulatory Authority (FINRA) relating to suitability and supervision of annuity transactions, or the rules of another national organization recognized by the commissioner, satisfy the requirements of this chapter. This section applies to FINRA member broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision conduct rules are similar to those applied to variable annuity sales.

(b) This section does not affect or limit the commissioner's ability to enforce or investigate under this chapter.

(c) Subsection (a) applies only if the insurer:

(1) monitors the FINRA member broker-dealer using information collected in the normal course of the insurer's business; and

(2) provides to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the broker-dealer to maintain the broker-dealer's supervision system.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1043 (H.B. [4492](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 12, eff. September 1, 2011.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.055. RECORDKEEPING REQUIREMENTS. (a) Each agent, independent agency, and insurer shall maintain, or otherwise be able to make available to the commissioner, records of the information collected from the consumer and other information used in making a recommendation that was the basis for a transaction subject to this chapter until the fifth anniversary of the date on which the transaction is completed by the insurer.

(b) An insurer may, but is not required to, maintain documentation on behalf of an agent.

(c) Records required to be maintained under this section may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media by any process that accurately reproduces the actual document.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.056. AGENT TRAINING REQUIREMENTS. (a) An agent may not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection.

(b) An agent who engages in the sale of annuity products must complete a one-time training course approved by the department and provided by a continuing education provider.

(c) The training required by Subsection (b) must be of a length sufficient to qualify for at least four continuing education credits, as determined by the commissioner in accordance with Chapter [4004](#) and any rules adopted under that chapter, but may be longer. The training required by Subsection (b) may be used to satisfy the continuing education requirements under Subchapters B and E, Chapter [4004](#), and is not in addition to the continuing education requirements in Section [4004.202](#).

(d) The training required by Subsection (b) must include information on the following topics:

- (1) the types of annuities and various classifications of annuities;
- (2) identification of the parties to an annuity;
- (3) how fixed, variable, and indexed annuity contract provisions affect consumers;
- (4) the application of income taxation of qualified and nonqualified annuities;
- (5) the primary uses of annuities; and
- (6) appropriate sales practices, replacement, and disclosure requirements.

(e) A provider of a course intended to comply with Subsection (b) must cover all topics listed in Subsection (d) and may not present any marketing information, provide training on

sales techniques, or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required topics.

(f) A provider of a course intended to comply with Subsection (b) must register as a continuing education provider in this state and comply with the rules and guidelines applicable to agent continuing education courses provided by Chapter 4004.

(g) An annuity training course may be conducted and completed by classroom or self-study methods in accordance with Chapter 4004.

(h) A provider of annuity training under Subsection (b) must comply with the reporting requirements and issue certificates of completion in accordance with Chapter 4004.

(i) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section is considered to satisfy the training requirements of this section.

(j) An insurer must verify that an agent has completed the annuity training course required by this section before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy the insurer's responsibility under this section by:

(1) obtaining a certificate of completion of the training course or obtaining an appropriate report provided by the department;

(2) using a department-sponsored database or vendor;
or

(3) using a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 1.001, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 13, eff. September 1, 2011.

SUBCHAPTER C. ENFORCEMENT

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [1777](#), 87th Legislature, Regular Session, for amendments affecting the following section.

Sec. 1115.101. MITIGATION. An insurer is responsible for compliance with this chapter. If a violation occurs because of the action or inaction of the insurer or the insurer's agent, the commissioner may:

(1) order:

(A) the insurer to take reasonable appropriate corrective action for any consumer harmed by the insurer or by the insurer's agent because of a violation of this chapter; or

(B) a general agency, independent agency, or the agent to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of this chapter; and

(2) impose appropriate sanctions as provided by Section [1115.102](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 14, eff. September 1, 2011.

Sec. 1115.102. SANCTIONS. (a) The commissioner may impose sanctions as provided by Chapter [82](#) for a violation of this chapter.

(b) The commissioner shall reduce or eliminate a sanction for a violation of this chapter otherwise applicable if:

(1) corrective action for the consumer was taken promptly by the agent or insurer after a violation was discovered; or

(2) the violation was not part of a pattern or practice.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. [2761](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. [2277](#)), Sec. 15, eff. September 1, 2011.